

**Remarks/Arguments:**

By this Amendment, claims 1-18 have been amended, and claims 20 and 21 have been newly added. Since claim 19 was previously cancelled, claims 1-18, 20 and 21 are currently pending in this application. The new and amended claims are fully supported by the originally-filed specification, do not introduce new matter into the application, and do not narrow the scope of the claimed invention.

In the non-final Office Action mailed on November 17, 2008, claims 1-21 were rejected as allegedly not falling within one of the four statutory categories of invention defined by 35 U.S.C. §101. It is assumed that the Examiner intended to refer to method claims 1-18, since those are the only claims which were pending in this application at the time the Office Action was issued.

In the interest of advancing the prosecution of this application, claims 1-18 have been converted from method claims to claims reciting computer programs embodied in a computer-readable media. According to the *Manual of Patent Examining Procedure*, “a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program’s functionality to be realized, *and is thus statutory*”. M.P.E.P. §2106.01 (emphasis added).


To preserve method coverage for the present invention, a newly-drafted method claim 20 has also been presented. Unlike the previous method claims, new claim 20 expressly recites a “computer-implemented” method that is “carried out by causing a computer to perform” certain enumerated steps. In addition, the “wherein” clause at the end of claim 20 states that certain calculated distances “are used by said computer” to determine a dissimilarity measure, and that “said computer thereby provid[es]” an indicator of the degree of similarity between sets of multimedia data. Taken together, these recitations serve to “tie” the recited method to another statutory category -- specifically, a “machine” under 35 U.S.C. §101, which includes a computer. Thus, claim

20 satisfies both the May 15, 2008 memorandum by the Deputy Commissioner for Patent Examination Policy cited in the Office Action, and the “machine or transformation” test announced in the recent decision by the U.S. Court of Appeals for the Federal Circuit in *In re Bilski*, 545 F.3d 943, 88 USPQ2d 1385 (Fed. Cir. 2008).

A newly-drafted apparatus claim 21 has also been presented to cover the system aspects of the present invention. The elements of claim 21 are recited in “means plus function” language under 35 U.S.C. §112, sixth paragraph, which is an appropriate format for claiming computer-related inventions. See M.P.E.P. §2106.

In view of the foregoing comments and claim amendments, it is believed that the rejection under 35 U.S.C. §101 has been overcome and that all of the currently pending claims are allowable. Should any further matters arise that prevent this application from being passed to issue, and that can conceivably be resolved by means of a telephonic interview, the Examiner is invited to contact the undersigned attorney at the telephone number listed below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John E. Holmes", is written over a horizontal line.

John E. Holmes  
Registration No. 29,392  
Attorney of Record

Roylance, Abrams, Berdo & Goodman, L.L.P.  
1300 19<sup>th</sup> Street, N.W., Suite 600  
Washington, D.C. 20036  
Telephone (202) 659-9076

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